MOTION FILED

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In the Supreme Court of the United States

OCTOBER TERM, 1971.

No. 70-97.

NORFOLK AND WESTERN RAILWAY COMPANY,

Petitioner,

vs.

RICHARD NEMITZ, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

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Movant is the duly accredited successor in interest of the Brotherhood of Railroad Trainmen, the duly accredited representative of the respondent-trainmen at the time of the events which gave rise to this dispute. Movant represents approximately 192,000 rail employees in the United States and Canada.

Brotherhood of Railroad Trainmen was made a Third Party Defendant in this cause by virtue of a Third Party Complaint filed against it by the Norfolk & Western Railway Company. However, none of the issues raised by said Third Party Complaint have been determined by the courts below. Movant believes that there are facts and questions of law presented on the evidence of record which transcend the interests of either the petitioner or the respondent in this dispute, and which bear directly on vital

interests of a substantial number of the 192,000 rail employees represented by the United Transportation Union. These facts and questions of law include the following:

(1) Prior to approval of rail consolidations, what are the duties and responsibilities of the Interstate Commerce Commission with respect to employee protection, in a case where employee protective terms have been agreed upon by railroad and employee representatives pursuant to the third sentence of 49 U.S.C. Section 5(2)(f)?

(2) To what extent may rail unions rely upon the proviso in 49 U.S.C. Section 5(11) exempting parties to rail consolidations from restraints of Federal Law, including the Railway Labor Act, in a case where employee protection stems from an agreement made pursuant to the third sentence of Section 5(2)(f)?

(3) May a rail union resort to its self-help remedy, namely, a strike, in a case where a railroad attempts to change the terms of a pre-merger agreement so as to reduce employee protection under that agreement?

(4) Even if it is assumed that the Interstate Commerce Commission need not review the adequacy of a pre-merger agreement respecting employee conditions, entered into pursuant to the third sentence of 49 U.S.C. Section 5(2)(f), does said pre-merger agreement, nevertheless, become part of the Commission's order of approval by operation of law?

Movant believes that the interests of the United Transportation Union in the disposition of the questions raised in this suit is not identical with that of either petitioner or respondent; that UTU's interest in these questions is relevant to the disposition of this case for the reason that the case presents questions of fact and law which are likely to bear upon enforcement of past and future

rail consolidations affecting vital interests of many of the 192,000 rail employees represented by movant; that UTU's views should be considered if these vital questions of law and fact are to be fully and adequately presented to the Court.

Movant has been unable to obtain written consent of all parties to the filing by it of a brief as amicus curiae.

WHEREFORE, movant respectfully prays for an order of the Court granting it leave to file a brief as amicus curiae.

Respectfully submitted,

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